United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

0 j - Contains affidavit of mailing

76-2026

To be argued by:
PAUL F. CORCORAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-2026

JOHN FRANZESE,

Appellant,

—*against*—

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAUL F. CORCORAN,
Assistant United States Attorney,
Of Counsel.

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-2026

JOHN FRANZESE,

Appellant,

—against—

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR THE APPELLEE

Preliminary Statement

John "Sonny" Franzese appeals from an order of the United States District Court for the Eastern District of New York, dated January 21, 1976, which denied, after a full evidentiary hearing before the Honorable Jacob Mishler, appellant's motion pursuant to Title 28, United States Code, Section 2255 for a new trial based upon newly discovered evidence. Appellant is presently confined in the United States penitentiary at Leavenworth, Kansas, serving a sentence of 50 years imprisonment on the underlying conviction.

On appeal, it is charged that the District Court (1) erroneously denied appellant's motion based upon findings of fact wholly unsupported by the evidence; and (2) erroneously failed to order polygraph examinations of all persons concerned with appellant's trial.

Statement of Facts

As this appeal arises out of appellant's fourth motion for a new trial,[1] based on a conviction affirmed by this Court eight years ago, we will not burden the Court with an extensive recital of the facts with which it is already fully familiar. See *United States* v. *Franzese*, 392 F.2d 954 (2d Cir. 1968) and *United States* v. *Franzese*, —F.2d—, (2d Cir. 1975).

Appellant's most recent motion for a new trial, brought pursuant to Section 2255, is predicated upon the recantation of Charles Zaher, one of the four government witnesses who testified at appellant's bank robbery trial in 1967. At the trial, Zaher, who admitted his own participation in two bank robberies on July 7, 1965 and July 13, 1965, testified that he was present at a meeting with the appellant at the Aqueduct Motor Inn in Queens, New York on or about July 21, 1965[2] when a conspiracy was hatched wherein appellant became the "mastermind" behind a series of bank robberies which took place nationally during the remainder of the summer and fall of 1965.[3] Since Zaher did not participate in the conspi-

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[1] For a summary of appellant's first three applications for a new trial see the Government's brief on appellant's last application, *Franzese* v. *United States*, Docket No. 75-2050, —F.2d— (2d Cir. 1975) at pp. 5-11.

[2] Cordero, Parks, Smith and Zaher, variously testified that the initial meeting with appellant was held between July 19, 1965 and July 22, 1965. The Court's have been referring to it as the July 21st meeting (398a).

[3] In October of 1965, Anthony Polisi was initially named by the four witnesses as the "mastermind" behind the bank robbery scheme. See *United States* v. *Franzese*, 392 F.2d 394 (2d Cir. 1968); *United States* v. *Polisi*, 416 F.2d 573 (2d Cir. 1969). Later, after the *Polisi* trial, at which Parks, Smith and Zaher testified, Franzese was first named. By all accounts, Franzese took over Polisi's management at the July 21, 1965 meeting at the Aqueduct Motor Inn.

racy after the July 21, 1965 meeting, his testimony at trial was merely corrborative of that of his accomplices, John Cordero, Richard Parks and James Smith, who testified as to the same July 21st meeting, as well as to details concerning appellant's subsequent participation in the planning and execution of the series of bank robberies.

More specifically, Zaher testified at the trial that he had participated in the July 7th and July 13th bank robberies together with Parks, Smith, Cordero and Anthony (Tony) and Salvatore Polisi (T. 1503-1523).[4] In these two robberies, Zaher's role was that of driver of the "getaway" vehicle, while Cordero, Parks and Smith entered the banks and effected the thefts. Tony Polisi was the "boss" at that time. Zaher stated that he was invited to join in the scheme by Richard Parks, a long-time friend, who told him that "good people" were behind the planned robberies (T. 1509). When neither of those bank robberies proved particularly remunerative, according to Zaher's trial testimony, Cordero complained of Tony Polisi's managment of the bank robberies at the July 21st meeting which Zaher and Cordero had with appellant at the Aqueduct Motor Inn (T. 1458).[5] Also present at the meeting were John Matera, "Red" Crabbe, and "Whitey" Florio, appellant's co-defendants in the 1967 trial. Nicholas Potere, another of appellant's co-defendants, whom Parks, Smith and Cordero placed in the conspiracy, and whose participation was corroborated, was not present at the July 21st meeting. Zaher testified at the trial that he could not identify

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[4] Unless otherwise specified parenthetical page references preceded by the letter "T" refer to the original trial transcript; those preceded by "A" refer to the appellant's appendix on the appeal.

[5] The robberies attributed to Franzese's leadership began on July 30, 1965. Polisi remains as the boss of the July 7th and July 13th bank robberies in which Zaher participated.

Potere, as he had never met him. It was at that meeting that appellant personally assumed control of the bank robbery ring (T. 1459).

After the July 21st meeting, Zaher allegedly learned of plans to kill him (T. 1459), and fearing for his life, he went into hiding. On or about July 29, 1965, he took his family to upstate New York. He did not participate in any of the subsequent bank robberies with which appellant was charged; nor did he allege that appellant had played any role in the July 7th or July 13th bank robberies in which Zaher had participated.

Pursuant to appellant's fourth motion for a new trial, dated November 7, 1975, Chief Judge Mishler held a full evidentiary hearing on December 12, 1975. At the hearing, held nine years after the trial, Zaher recanted his trial testimony. He alleged that he falsely testified as to appellant's presence at the July 21st meeting at the Aqueduct Motor Inn (A. 194a). Indeed, he claimed that he had never seen appellant prior to testifying against him in the 1967 trial (A. 194a-195a). Zaher stated that he had joined Parks, Smith and Cordero in fabricating testimony against appellant in order to obtain leniency in sentencing for their own participation in the bank robberies.

In support of his recantation, Zaher identified a letter, Defendant's Exhibit 3, which he said he had written in May 1966 to Tommy Matteo, a boyhood friend, while incarcerated at Danbury, Connecticut. The letter, which was allegedly smuggled out of Danbury by Zaher's wife and "shown" to Matteo in May of 1966, reads, in pertinent part:

> ". . . Richie is going to testify against you and they want me to. You see how we framed this guy Tony, and I have to go along with the guys to

> frame this guy Sonny to for those . . . Bank robberies. . . . Tom they really have me squeezed in I don't mind testifying against guys I don't know but you are a different story." (H. 503a).

Zaher claimed that the May, 1966 letter referred to the fabrication of testimony against "Tony" Polisi and "Sonny" Franzese,[6] and to pressure which was being put upon him to testify against Tommy Matteo concerning a truck hyjacking. He admitted that he and Matteo had, in fact, participated in the hyjacking together, (A. 214a) but that he was reluctant to testify against Matteo because Matteo was a good friend.[7] (A. 229a)

When questioned about the timeliness of his recantation, Zaher claimed to have admitted his perjury as early as 1969, shortly after his release from prison. He stated that at that time, he went to see appellant's trial attorney, Maurice Edelbaum, and told Mr. Edelbaum that he had lied at appellant's trial (A. 246a). According to Zaher, Mr. Edelbaum did not trust him, (A. 242a), but "cut him short" and "chased him out" of the office (A. 243a-244a). Though available, Mr. Edelbaum was not called to testify for appellant at the hearing, and, therefore, Zaher's testimony as to his early attempt at recantation is uncorroborated.

On cross-examination, it became apparent that Zaher's efforts at recantation since 1969 were rather limited. He conceded that he never approched the Court, the prosecutor, or the Federal Bureau of Investigation with the story that he had fabricated his testimony against the appellant.

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[6] Appellant maintains that the letter was written by Zaher after he had testified against Polisi and before he testified against Franzese.

[7] Matteo was subsequently convicted on that hyjacking charge. See *United States* v. *Matteo*, 388 F.2d 368 (2d Cir. 1968).

(248a-249a) Indeed, though he was aware of Eleanor Cordero's affidavit on appellant's behalf in 1974, Zaher did not come forward at that time with his allegation of fabrication. On the contrary, when, in December of 1974, Charles Zaher was interviewed by the Federal Bureau of Investigation about Eleanor Cordero's story that he, Cordero, Parks, and Smith had fabricated their testimony concerning appellant, Zaher reaffirmed his trial testimony, and told the Federal Bureau of Investigation that Eleanor Cordero was lying (A. 278a-279a).

Thomas Matteo and Ann Zaher also testified at the hearing in appellant's behalf. They confirmed Zaher's testimony that the letter, Defendant's Exhibit 3, had been smuggled out of Danbury in May of 1966. Mrs. Zaher also produced a post card which allegedly established that she and Zaher were with their children at North Pole, New York on July 31, 1965 (A. 326a). She testified that the trip was approximately two weeks in length and that they returned to New York City on or about August 6, 1965 (A. 325a-326a). Mrs. Zaher remembered being away prior to July 26, 1965 because that was her sister's birthday (A. 329a).[8]

Matteo testified that Zaher informed him of the "frame" eight or nine months prior to his receipt of the May 1966 letter (A. 172a). Yet when Ann Zaher "showed" him Zaher's letter, he merely told her to "tell her husband he's crazy" (A. 161a). He returned the allegedly exculpatory letter to Mrs. Zaher (A. 162a) and told her to "hold on to it", saying that he "might need it" (*id*). Matteo also corroborated Zaher's trial testimony

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[8] As Judge Mishler noted in his Memorandum denying appellant's motion, neither Mrs. Zaher's testimony nor the post card dated July 31, 1965 are inconsistent with Zaher's trial testimony that he was present at the Aqueduct Motor Inn meeting on July 21, 1965. Indeed at trial he testified as to the trip he took with his family immediately after that meeting.

that Zaher left the conspiracy because there was a plot to have him killed (A. 154a). This was in direct contradiction to Zaher's recanting affidavit in support of appellant's motion in which he stated that he left the conspiracy not out of fear, but because he could make more money through other types of crime (A. 30a).

Perhaps more significantly, Matteo testified that he relayed the content of Zaher's letter to appellant through a mutual acquaintance in May of 1966.[9] He also discussed the "letter" with appellant's trial counsel, Maurice Edelbaum, during a subsequent murder trial in Queens County in 1967 (A. 165a).

Finally, appellant himself testified for the first time at the recantation hearing. Quite understandably, he claimed that he took no part in any conspiracy to rob banks in 1965; nor had he ever met Cordero, Parks, Smith or Zaher prior to his trial in 1967.

On January 21, 1976, Chief Judge Mishler issued his Memorandum and Order denying appellant's motion for a new trial. Based upon his viewing of the evidence both at the trial and at the recantation hearing, Judge Mishler found that the trial testimony against appellant "[stood] firm under the attack" (A. 388a). The court noted several inexplicable inconsistencies between Zaher's recantation

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[9] This appears to be corroborated by a motion and affidavit filed by appellant in September of 1966 wherein appellant sought to depose Zaher to obtain "certain information which might be pertinent to the defense" (509a). In this supporting affidavit, appellant stated that he believed Zaher had "very pertinent information concerning my position as a defendant in this action, more particularly my innocence" (511a). The affidavit continued, "[i]t is my firm belief that the said Charles E. Zaher, Jr. has important information which is necessary to my defense, without which I will definitely be prejudiced" (id.). The motion was subsequently withdrawn.

testimony and the evidence at trial;[10] and Zaher's May, 1966 letter was discounted as being susceptible of several interpretations, including one consistent with Zaher's trial testimony (A. 384a-385a and Fn. 13). Holding that Zaher's recantation testimony was incredible, Judge Mishler stated, "[t]he court is reasonably well satisfied that the testimony given by Zaher at the trial was true" (A. 390a).

In addition to finding Zaher's recantation testimony unreliable, the Court denied appellant's motion on alternate grounds. In view of the unrecanted trial testimony of Cordero, Smith and Parks, which was in some respects corroborated, the Court held that Zaher's recantation "would probably not produce a different verdict" if the case were retried (A. 393a). Moreover, Chief Judge Mishler found that appellant "was aware of the contents of Zaher's letter to Matteo soon after it was smuggled out of Danbury . . . in May or June of 1966" (*id*). Appellant's failure to pursue either the "letter" or Zaher's recantation testimony for nine years constituted a lack of "due diligence", which "alone requires a denial of the relief Franzese requests" (A. 393a).

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[10] Chief among the inconsistencies was Zaher's trial identification of Franzese and his failure at that time to identify Potere. If he were fabricating, the inconsistency is not explainable (A. 385a). Also troublesome is Zaher's recantation story that he left the conspiracy because he could make money in less risky criminal endeavors. The Court found his trial explanation of fear for his life more truthful. That was supported by Matteo's testimony at the recantation hearing (A 159a).

ARGUMENT

POINT I

The District Court properly denied appellant's motion for a new trial.

On appeal, appellant concedes, as he must, that recantation testimony is inherently suspect, and that a motion for a new trial based thereon should be granted only with the greatest of caution. *United States ex rel. Sostre* v. *Festa*, 513 F.2d 1313, 1318 (2d Cir. 1975); *United States* v. *Costello*, 255 F.2d 876 (2d Cir. 1958); *United States* v. *Troche*, 213 F.2d 401, 403 (2d Cir. 1954); *United States* v. *Persico*, 339 F. Supp. 1077, 1085 (E.D. N.Y. 1972), *affirmed on opinion below*, 467 F.2d 845 (2d Cir. 1972), *cert. den.*, 410 U.S. 496 (1973); *People* v. *Shilitano*, 218 N.Y. 161, 169-170 (1969). Similarly, appellant is in accord with the three-pronged *Larrison* test [11] applied by the Court in its weighing of Zaher's recantation in this case. Having thus conceded all the applicable law, appellant resigns himself on appeal to a reargument of the factual evidence presented at the recantation hearing; and, viewing that evidence in the light most favorable to himself, he concludes that the District

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[11] Under the *Larrison* test, as modified by this Court in *United States* v. *Stofsky*, 527 F.2d 237 (2d Cir. 1975), defendant must make a three pronged showing before being entitled to a new trial based upon recanted testimony. The defendant must show (1) that the testimony given by the material witness was false; (2) that without it the jury would probably have reached a different conclusion; and (3) the party seeking a new trial was taken by surprise when the false testimony was given, and was unable to meet it or did not know of its falsity until after the trial. *United States* v. *Larrison*, 24 F.2d 82, 87 (7th Cir. 1929); *United States* v. *Troche*, 213 F.2d 401, 403 (2d Cir. 1954); *United States* v. *Stofsky*, 527 F.2d 237 (2d Cir. 1975).

Court made erroneous findings of fact. Considering the limited scope of appellate review, appellant's arguments are without merit.

It is well established that the scope of review of the denial of a motion for a new trial based upon newly discovered evidence is extremely narrow. *United States* v. *Johnson*, 327 U.S. 106, 111-112 (1946); *United States* v. *Polisi*, 416 F.2d 573, 576 (2d Cir. 1969). As this Court noted in *Polisi, supra*, a matter related to the instant case, "[o]nce the trial court has made a factual determination—as to whether there has been suppression or perjury, for example—the appellate court may not intervene except 'when the findings of fact are wholly unsupported by evidence; . . . it should never do so where it does not clearly appear that the findings are not supported by *any* evidence.' *United States* v. *Johnson*, 327 U.S. 106, 111-112, 66 S. Ct. 464, 466, 90 L. Ed. 562 (1946)." (Emphasis added) *United States* v. *Polisi*, *supra*, 416 F.2d at 576. *See also United States* v. *Strauss*, 443 F.2d 986, 990 (5th Cir. 1971); *Gordon* v. *United States*, 178 F.2d 896, 900 (6th Cir. 1949).

The factual findings of the District Court which are challenged by appellant on appeal are supported by substantial evidence. At the outset, Judge Mishler denied appellant's motion for a new trial based upon the first prong of the *Larrison* test, holding that "the Court is reasonably well satisfied that the testimony given by Zaher at the trial was true" (A. 390a). Having heard Zaher's testimony and having observed his demeanor both at the trial and at the recantation hearing, Judge Mishler was particularly well qualified to determine Zaher's credibility in both settings, *United States* v. *Johnson*, *supra*, 327 U.S. at 112. Moreover, Zaher's trial testimony was corroborated by the "exceedingly detailed and circumstantial" trial testimony of his associates, Cordero, Smith and Parks. *United States* v. *Franzese*, *supra*, 392 F.3d at 954. In

light of the extensive corroboration of Zaher's trial testimony, it cannot be said that the District Court's finding that Zaher's trial testimony was truthful was unsupported by *any* evidence.

Beyond the corroboration for Zaher's trial testimony which appears in the trial transcript, the District Court found support for its disbelief of his subsequent version in the recantation testimony itself. For example, Zaher's recanting versions of the events leaves totally inexplicable Potere's corroborated role in the bank robbery scheme (A. 391a). Were Zaher's recantation to be believed, only he, Cordero, Smith and Parks participated in the robbery scheme. They thereafter fabricated testimony first against Tony Polisi and later against Franzese, Crabbe, Florio, Matera and Potere in order to obtain lenient treatment from the Government. As this Court noted in affirming the appellant's conviction, there was corroboration of the accomplice testimony by lawyers for Parks and Cordero who received bail money for their clients from the defendant Potere. *United States* v. *Franzese*, *supra*, 392 F.2d at 457, fn.3. That evidence is wholly inconsistent with Zaher's recantation version of the facts (A. 391a).

Similarly inconsistent with Zaher's allegations of fabrication was his failure at trial to identify Potere. Though he identified appellant, whom he now claims he had not seen before trial, he was unable to identify Potere, stating that Potere was not present at the July 21st meeting. Were Zaher falsifying his trial identification of Franzese, logic would distate that he would have identified Potere as well (A. 388a).

Zaher's recantation is further belied by his incredible allegation that he admitted his perjury to appelant's counsel, Maurice Edelbaum, in 1969. As the Court noted, appellant's case was still *sub judice* at the time (A. 398a). Such a revelation by Zaher would certainly have prompted

some action by appellant's counsel. Nor did Zaher's 1974 reaffirmation of this trial testimony contritbute to the credibility of his 1975 recantation (A. 390a).

Finally, Zaher's letter of May, 1966, Defendant's Exhibit 3, can be read to support his trial testimony rather than that at the recantation hearing. In threatening to testify against Matteo on the hyjacking charge, Zaher analogized to his "frame" of Tony (Polisi) and his "frame" of Sonny (Franzese). Since both Zaher and Matteo admitted that they did in fact participate in the hyjacking about which Zaher was threatening to testify, his "frame" of Matteo on that charge would have been truthful. It can reasonably be concluded, then, that in referring to his "frame" of Polisi and Franzese, Zaher was merely indicating that he was testifying against them, and not that he was testifying falsely.[12]

Having concluded that Zaher's recantation testimony was false, the District Court properly denied appellant's motion for a new trial. Indeed, as Judge Cardozo noted in *People* v. *Shilitano, supra*, 218 N.Y. at 180-181 (concurring opinion), "it was the duty of the trial judge to try the facts and determine where the likelihood of truth lies. . . [If] convinced that the second tale was false . . .

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[12] Support for this theory can be found in the trial transcript as well. Cordero, Parks and Smith were arrested on September 30, 1965. Almost immediately they began independently to place Tony Polisi in the scheme. While Cordero did not name him as the "mastermind" at that time, he did [redacted] attribute a lesser role to Polisi. See *United States* v. *Polisi, supra* 416 F.2d at 573. Indeed, Cordero testified as to Polisi's role in the grand jury on October 7, 1965. Zaher was arrested approximately a week after his colleagues. Without having any post-arrest contact with his accomplices, he gave a statement to the Federal Bureau of Investigation on October 11, 1965, wherein he fully implicated Tony Polisi in the July 7th and July 13th bank robberies (T. 1557-64). Since there is substantial evidence permitting the inference that Tony Polisi did in fact participate in those robberies, the Court could reasonably conclude that the "frame" of Tony Polisi was based on truthful testimony.

his duty was clearly marked. . . . He was not at liberty to shift upon the shoulders of another jury his own responsibility."

The trial court's conclusion as to the second prong of the *Larrison* test is similarly beyond review. In the face of the unrecanted trial testimony of Cordero, Parks and Smith, which was far more detailed and extensive than was Zaher's, it cannot be found that the district court was without *any* evidence to support its conclusion that the recantation "would probably not produce a different verdict" (A. 393a).

Nor was the court's conclusion that appellant failed to act with "due diligence" unsupported by the evidence. There was ample testimony in the record to support the Court's finding that Franzese was aware of the Zaher letter prior to trial in 1966. Matteo testified that he relayed the information contained in Zaher's letter to appellant though a mutual friend shortly after he had received it. That appellant received it was supported by the motion filed in his behalf in September of 1966. (A. 509a). Moreover, both Matteo and Zaher allegedly discussed these matters with appellant's counsel, Maurice Edelbaum by 1969. Yet no resort was had to the Courts until 1975. Based upon the testimony at the recantation hearing, the court below was certainly justified in concluding that appellant failed to act with due diligence.[13]

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[13] The District Court could well have denied appellant's application without reaching the merits. Appellant's motion is for a new trial based upon newly discovered evidence. Rule 33 of the Federal Rules of Criminal Procedure precludes bringing such motion after a two year period. The time limitation is jurisdictional. *United States* v. *Franzese*, — F.2d — at fn.7 (2d Cir. 1975).

Though appellant denominated this motion pursuant to Section 2255, no allegation is made, nor is there any evidence, that the government knowingly used perjured testimony. In the absence

[Footnote continued on following page]

POINT II

The District Court properly exercised its discretion in refusing to order polygraph examinations.

Appellant next contends that the District Court committed reversible error by refusing to order polygraph examinations of all persons connected with the trial. Appellant's contention is wholly without merit.

Appellant concedes that "the great weight of judicial opinion" would preclude the admission of polygraph evidence, citing *United States* v. *Ridling*, 350 F. Supp. 90, 94 (E.D. Mich. 1972). Under the most liberal authority cited, the admission of such evidence is discretionary. *United States* v. *Oliver*, 525 F.2d 631 (8th Cir. 1975); *United States* v. *Wainwright*, 413 F.2d 976, 803 (10th Cir. 1969). In view of the state of the law on the admission of polygraph evidence, it is specious to argue that the District Court abused its discretion in refusing to order such tests.

Contrary to appellant's suggestion, this is not an "unusual case calling for unusual methods to resolve it." The credibility of the witnesses apellant sought to have tested by polygraph examination was fully and finally determined by the jury in 1967. That jury determination was affirmed by this Court. *United States* v. *Franzese*, *supra*, 392 F.2d at 394. The principle of judicial finality militates against the annual reexamination of credibility which this appellant seeks. The District Court certainly acted within its discretion in denying appellant's request.

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of such knowing use by the government, no constitutional issue arises, and a motion pursuant to Section 2255 will not lie. *United States* v. *Mauriello*, 289 F.2d 725 (2d Cir. 1961); *Dansby* v. *United States*, 291 F. Supp. 740, 793 (S.D.N.Y. 1968). See *also Smith* v. *United States*, 358 F.2d 663, 684 (3d Cir. 1966); *Holt* v. *United States*, 303 F.2d 791, 794 (8th Cir. 1962); *Taylor* v. *United States*, 292 F.2d 826, 832 (8th Cir. 1956).

CONCLUSION

The order of the District Court denying appellant's motion for a new trial should be affirmed.

Respectfully submitted,

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAUL F. CORCORAN,
Assistant United States Attorney,
Of Counsel.

★ U. S. Government Printing Office 1976— 614—353—208

COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 12th day of May 19 76 he served ~~a copy~~ two copies of the within

Brief for the Appellee

by placing the same in a properly postpaid franked envelope addressed to:

Michael B. Pollack, Esq.
1345 Avenue of Americas
New York, N. Y.

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ~~Washington Street~~ 225 Cadman Plaza East, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

12th day of May 19 76

Carolyn N. Johnson

CAROLYN N. JOHNSON
NOTARY PUBLIC, State of New York
No. 41-4618298
Qualified in Queens County
Term Expires March 30, 19 77

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